



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR 165

Docket Number USCG-2021-0439

RIN 1625-AA00

Safety Zone; Caruso Affiliated Holdings Fireworks Event, Newport Beach, California

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone near Balboa Pier, Newport Beach Harbor, California, around the fireworks launch barge SWOB-1, during the loading of pyrotechnics at Los Angeles Berth 184, the transit of the barge from LA Berth 184 to the display location in vicinity of Southeast of Balboa Pier and for the duration of the fireworks display, on July 4, 2021. This temporary safety zone is necessary to provide for the safety of the waterway users by keeping them clear of potential harmful debris within the fall out zone during the fireworks display scheduled to take place within Newport Beach Harbor, and the loading and transit of the explosives. Entry of persons or vessels into this temporary safety zone is prohibited unless specifically authorized by the Captain of the Port, Los Angeles – Long Beach, or her designated representative.

DATES: This rule is effective from 7 p.m. through 11 p.m. on July 4, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2021-0439 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email the LCDR Maria Wiener, U.S. Coast Guard Sector Los Angeles – Long

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
LLNR	Light List Number
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Publishing an NPRM would be impracticable in this case due to the timing of the event. The event sponsor submitted their application on May 9th, 2021 however, the application was incomplete and did not address the vessels that would be used to carry out the event. As the Coast Guard received late notification of the fireworks display vessels, there is not sufficient time for notice and comment procedures.

For the reasons stated above, we are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is necessary to protect persons and property from the dangers associated with the fireworks event on July 4, 2021.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U. S. C. 70034; The Captain of the Port (COTP), Los Angeles – Long Beach has determined that potential hazards associated with navigation safety may arise because the fireworks display creates potential for hazards for any person or vessel within a 1,000-foot radius of the fireworks launch barge. Potential hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This temporary safety zone is necessary to ensure the safety of, and reduce the risk to, the public, and mariners, in the Newport Beach Harbor.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on July 4, 2021, encompassing all navigable waters from the surface to the sea floor within a 100-foot radius around the fireworks launch barge SWOB-1, during the loading of the pyrotechnics at LA Berth 184, and during the transit of the fireworks barge from LA Berth 184 to the fireworks launch site in approximate position: 33° 35.474' N; 117° 53.296' W, in vicinity of Newport Beach Harbor. The temporary safety zone will then increase to 1,000-feet 15 minutes prior to, and for the duration of the fireworks display, expected to commence at 9 p.m. and last approximately 30 minutes. These coordinates are based on North American Datum of 1984.

No vessel or person is permitted to operate in the safety zone without obtaining permission from the Captain of the Port (COTP) or the COTP's designated representative. Sector Los Angeles – Long Beach may be contacted on VHF–FM Channel 16 or 310-521-3801. The general boating public will be notified prior to the enforcement of the temporary safety zone via Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

This regulatory action determination is based on the size, location, duration of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. § 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. § 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant

economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and

Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone in an area in the vicinity of Newport Beach Harbor, Newport, CA. Such actions are categorically excluded from further review under paragraph 60(a) of Appendix A, Table 1 of the Department of Homeland Security Directive 023-01-001-01, Rev. 01. An environmental analysis checklist supporting this determination and Record of Environmental Consideration (REC) are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety

or security of people, places or vessels.

List of Subjects in 46 U. S. C. 70034, 70051

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11-060 to read as follows:

§ 165. T11-060 Safety Zone; Caruso Affiliated Holdings Fireworks Event, Newport Beach, California

(a) *Location.* The following area is a safety zone: all navigable waters from the surface to the sea floor within a 100-foot radius around the fireworks launch barge SWOB-1, during the loading of the pyrotechnics at Los Angeles Berth 184, and during the transit of the fireworks barge from Los Angeles Berth 184 to the fireworks launch site in approximate position: 33° 35.474' N; 117° 53.296' W, in vicinity of Newport Beach Harbor. The temporary safety zone will then increase to 1000-feet 15 minutes prior to, and for the duration of the fireworks display, expected to commence at 9:00 p.m. and last approximately 30 minutes. These coordinates are based on North American Datum of 1983, World Geodetic System, 1984.

- (b) *Definitions.* For the purposes of this section:

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Los Angeles – Long Beach (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, hail Coast Guard Sector Los Angeles – Long Beach on VHF–FM Channel 16 or call at (310) 521-3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 7 p.m. to 11 p.m. on July 4, 2021. The firework display is scheduled to commence at 9 p.m. This rule will be enforced during the loading, transit and duration of the fireworks display, which will be broadcasted via local Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

Dated: 25 June 2021

R. E. Ore
Captain, U.S. Coast Guard
Captain of the Port, Los Angeles – Long Beach
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